

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - :  
UNITED STATES OF AMERICA, and THE : 11 Civ. 8196 (CM) (JCF)  
STATES OF CALIFORNIA, COLORADO, :  
CONNECTICUT, DELAWARE, THE DISTRICT: O R D E R  
OF COLUMBIA, FLORIDA, GEORGIA, :  
HAWAII, ILLINOIS, INDIANA, :  
LOUISIANA, MARYLAND, MASSACHUSETTS, :  
MICHIGAN, MINNESOTA, MONTANA, :  
NEVADA, NEW JERSEY, NEW MEXICO, NEW: :  
YORK, NORTH CAROLINA, OKLAHOMA, :  
RHODE ISLAND, TENNESSEE, TEXAS, :  
VIRGINIA, and WISCONSIN, ex rel. :  
DAVID KESTER, :  
:

Plaintiffs and Relator, :

- against - :

NOVARTIS PHARMACEUTICALS :  
CORPORATION, :

Defendant. :  
- - - - - :

JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

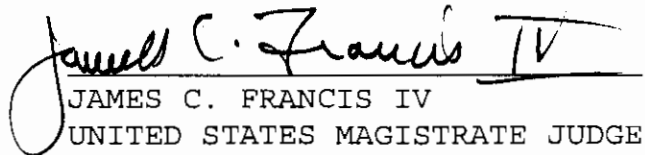
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The Government moved by letter dated March 16, 2015, for an order compelling Novartis to produce documents concerning legal advice regarding its relationship with Myfortic pharmacies. At a hearing held today, counsel for Novartis made clear that Novartis is not asserting a good faith defense with respect to the Government's claims regarding Myfortic; rather, Novartis will contest the factual basis for those claims. Accordingly, there is no "at issue" waiver of the attorney-client privilege. Nor is there subject matter waiver based on Novartis' waiver of the

privilege with respect to communications concerning Exjade. As Novartis' counsel previously represented, it is asserting an advice-of-counsel defense with respect to the Government's claims concerning Exjade, and therefore is waiving the privilege as to any communications in any way related to those claims. However, there are undoubtedly attorney-client communications that relate uniquely to Myfortic but not to Exjade, and they remain privileged.

For these reasons, and for the reasons set forth on the record today, the Government's motion is denied.

SO ORDERED.

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
March 31, 2015

Notice to all counsel of record via ECF